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BRIAN C. McNEIL
EXECUTIVE SECRETARY



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ARIZONA CORPORATION COMMISSION 2001 APR 10 3 A 8:04

AZ CORP COMMISSION
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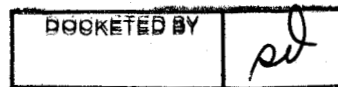
Arizona Corporation Commission

DOCKETED

DOCKET NO: T-03842A-00-0130

APR 03 2001

TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Opinion and Order on:

ADVANCED TELCOM GROUP, INC.
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

APRIL 12, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

APRIL 17, 2001 AND APRIL 18, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
ADVANCED TELCOM GROUP, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE, INTEREXCHANGE, AND ACCESS
9 TELECOMMUNICATIONS SERVICES

DOCKET NO. T-03842A-00-0130

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: March 8, 2001

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Mr. Stephen Gibelli

13 APPEARANCES: Mr. Richard H. Levin, Chief Regulatory Counsel, on
behalf of Advanced TelCom Group, Inc.;

14 Mr. Devinti Williams, Staff Attorney, Legal Division,
15 on behalf of the Utilities Division of the Arizona
Corporation Commission.

16 **BY THE COMMISSION:**

17 Having considered the entire record herein and being fully advised in the premises, the
18 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

19 **FINDINGS OF FACT**

20 1. On February 29, 2000, Advanced TelCom Group, Inc. ("Advanced" or "Applicant")
21 filed with the Commission an application for a Certificate of Convenience and Necessity
22 ("Certificate") to provide competitive facilities-based and resold local exchange, interexchange,
23 exchange access telecommunications services in Arizona.

24 2. Advanced is a Delaware corporation, authorized to do business in Arizona since 2000.

25 3. On July 5, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff
26 Report, which recommended approval of the application and included a number of additional
27 recommendations.
28

1 4. On July 14, 2000, a Procedural Order was issued setting the matter for hearing on
2 September 20, 2000.

3 5. On September 13, 2000, Advanced made a request for a continuance.

4 6. On September 19, 2000, a second Procedural Order was issued granting the
5 continuance and setting the matter for hearing on November 29, 2000.

6 7. On October 10, 2000, Advanced filed Affidavits of Publication indicating compliance
7 with the Commission's notice requirements.

8 8. On November 14, 2000, Advanced filed another Motion for a Continuance.

9 9. On November 16, 2000, a third Procedural Order was issued setting the matter for
10 hearing on January 24, 2001.

11 10. On January 24, 2001, at the scheduled time for the hearing to commence, Advanced
12 made an oral Motion for a Continuance indicating that it was not ready to proceed with the hearing.

13 11. On January 25, 2001, a fourth Procedural Order was issued setting the matter for
14 hearing on March 8, 2001.

15 12. A hearing was held on March 8, 2001, and Advanced and Staff presented evidence.

16 13. Qwest Corporation and Advanced have not as yet reached an interconnection
17 agreement.

18 14. The management of Advanced has many years of experience in the
19 telecommunications industry.

20 15. Applicant has the technical capability to provide the services that are proposed in its
21 application.

22 16. Currently there are several incumbent providers of local exchange, toll, and exchange
23 access services in the service territory requested by Applicant, and numerous other entities have been
24 authorized to provide competitive local exchange services in all or portions of that territory.

25 17. It is appropriate to classify all of Applicant's authorized services as competitive.

26 18. The Staff Report stated that Applicant has no market power and the reasonableness of
27 its rates would be evaluated in a market with numerous competitors.
28

1 19. According to Staff, Advanced submitted financial statements for the fiscal year ending
2 November 30, 1999. These financial statement list assets of \$151.24 million, total stockholders'
3 equity of \$4.63 million, and a net loss of \$20.00 million on revenues of \$270,000. Based on this
4 information, Staff believes that Advanced lacks sufficient financial strength to offer the requested
5 telecommunications services in Arizona absent the procurement of a performance bond.

6 20. Staff recommended, as amended at the hearing, that Advanced's application for a
7 Certificate to provide competitive facilities-based and resold local exchange, interexchange, and
8 access telecommunications services be granted subject to the following conditions, that:

9 (a). in order to protect the Applicant's customers,

10 (1). Advanced shall file proof of a performance bond for \$100,000 no less
11 than 30 days prior to providing service;

12 (2). if Advanced desires to discontinue service, it should file an application
13 with the Commission pursuant to A.A.C. R14-2-1107;

14 (3). Advanced should notify its customers and the Commission at least 30
15 days prior to filing an application to discontinue service pursuant to
16 Commission rules, and any failure to do so should result in forfeiture of the
17 Applicant's performance bond; and

18 (4). after one year of operation under the Certificate granted by the
19 Commission, Advanced should be allowed to file a request for cancellation of
20 its established performance bond. Such request should be accompanied by
21 information demonstrating Advanced's financial viability. Upon receipt of
22 such filing and after Staff review, Staff will forward its recommendation to the
23 Commission for a Decision that the requested cancellation is in the public
24 interest.

25 (b). Advanced should file its tariffs within 30 days of an Order in this matter, and
26 in accordance with this Decision;

27 (c). unless its provides services solely through the use of its own facilities,
28 Applicant should procure an Interconnection Agreement before being allowed
29 to offer local exchange service;

30 (d). Advanced should file with the Commission, within 30 days of an Order in this
31 matter, its plan to have its customers telephone numbers included in the
32 incumbent's Directories and Directory Assistance databases;

33 (e). Advanced pursue permanent number portability arrangements with other LECs
34 pursuant to Commission rules, federal laws and federal rules;

35 (f). Advanced agree to abide by and participate in the AUSF mechanism instituted
36 in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-03905A-00-
37 0513E-95-0498);

- 1 (g). Advanced abide by the quality of service standards that were approved by the
2 Commission for USWC in Docket No. T-0151B-93-0183;
- 3 (h). in areas where Applicant is the sole provider of local exchange service
4 facilities, Advanced will provide customers with access to alternative providers
5 of service pursuant to the provisions of Commission rules, federal laws and
6 federal rules;
- 7 (i). Advanced certify, through the 911 service provider in the area in which it
8 intends to provide service, that all issues associated with the provision of 911
9 service have been resolved with the emergency service providers within 30
10 days of an Order in this matter;
- 11 (j). Advanced abide by all the Commission decisions and policies regarding
12 CLASS services;
- 13 (k). Advanced provide 2-PIC equal access;
- 14 (l). Advanced notify the Commission immediately upon changes to its address or
15 telephone number; and
- 16 (m). Advanced comply with all Commission rules, orders, and other requirements
17 relevant to the provision of intrastate telecommunications service;

18 21. Staff further recommended that Advanced's tariffs be approved on an interim basis
19 subject to the following:

- 20 (a). That Advanced should be required to file in this Docket, within 18 months of
21 the date it first provides service following certification, sufficient information
22 for Staff analysis and recommendation for a fair value finding, as well as for an
23 analysis and recommendation for permanent tariff approval. This information
24 must include, at a minimum, the following:
- 25 1. A dollar amount representing the total revenue for the first twelve months
26 of telecommunications service provided to Arizona customers by
27 Advanced following certification, adjusted to reflect the maximum rates
28 that Advanced has requested in its tariff. This adjusted total revenue figure
could be calculated as the number of units sold for all services offered
times the maximum charge per unit.
 2. The total actual operating expenses for the first twelve months of
telecommunications service provided to Arizona customers by Advanced
following certification.
 3. The value of all assets, listed by major category, used for the first twelve
months of telecommunications services provided to Arizona customers by
Advanced following certification. Assets are not limited to plant and
equipment. Items such as office equipment and office supplies should be
included in this list.

- 1 (b). Advanced's failure to meet the condition to timely file sufficient information
2 for a fair value finding and analysis and recommendation of permanent tariffs
3 should result in the expiration of the Certificate of Convenience and Necessity
4 and of the tariffs

5 22. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion
6 in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of
7 the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all
8 public service corporations in Arizona prior to setting their rates and charges."

9 23. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
10 Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this
11 time we are going to request FVRB information to insure compliance with the Constitution should
12 the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also
13 are concerned that the cost and complexity of FVRB determinations must not offend the
14 Telecommunications Act of 1996.

14 CONCLUSIONS OF LAW

15 1. Applicant is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Applicant and the subject matter of the
18 application.

19 3. Notice of the application was given in accordance with the law.

20 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a
21 Certificate to provide competitive telecommunications services.

22 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised
23 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth
24 in its application.

25 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide
26 competitive facilities-based and resold local exchange, interexchange, and exchange access
27 telecommunications services in Arizona as conditioned by Staff's recommendations as modified
28 below.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges which are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations in Findings of Fact Nos. 20 and 21 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Advanced TelCom Group, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, interexchange, and exchange access telecommunications services in Arizona shall be, and is hereby, granted, as conditioned herein.

IT IS FURTHER ORDERED that Advanced TelCom Group, Inc. shall comply with all of the Staff recommendations set forth in Findings of Fact Nos. 20 and 21.

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	1990	2000	2009
1. <i>Chlamydia trachomatis</i>	1.0	1.0	1.0
2. <i>Neisseria meningitidis</i>	1.0	1.0	1.0
3. <i>Streptococcus pneumoniae</i>	1.0	1.0	1.0
4. <i>Haemophilus influenzae</i>	1.0	1.0	1.0
5. <i>Legionella pneumophila</i>	1.0	1.0	1.0
6. <i>Salmonella enteritidis</i>	1.0	1.0	1.0
7. <i>Escherichia coli</i>	1.0	1.0	1.0
8. <i>Staphylococcus aureus</i>	1.0	1.0	1.0
9. <i>Pseudomonas aeruginosa</i>	1.0	1.0	1.0
10. <i>Mycobacterium tuberculosis</i>	1.0	1.0	1.0
11. <i>Candida albicans</i>	1.0	1.0	1.0
12. <i>Aspergillus fumigatus</i>	1.0	1.0	1.0
13. <i>Cryptosporidium parvum</i>	1.0	1.0	1.0
14. <i>Giardia lamblia</i>	1.0	1.0	1.0
15. <i>Toxoplasma gondii</i>	1.0	1.0	1.0
16. <i>Legionella pneumophila</i>	1.0	1.0	1.0
17. <i>Legionella pneumophila</i>	1.0	1.0	1.0
18. <i>Legionella pneumophila</i>	1.0	1.0	1.0
19. <i>Legionella pneumophila</i>	1.0	1.0	1.0
20. <i>Legionella pneumophila</i>	1.0	1.0	1.0

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1	0	-0.06	0.07
2	-0.06	0	0.08
3	0.07	0.08	0

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1 IT IS FURTHER ORDERED that Advanced TelCom Group, Inc. shall file with the
2 Compliance Section of the Utilities Division a letter indicating the date in which it will begin
3 providing service at least 60 days prior to providing service.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2001.

15
16 BRIAN C. McNEIL
17 EXECUTIVE SECRETARY

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DISSENT _____
SG:mlj

1 SERVICE LIST FOR: ADVANCED TELCOM GROUP, INC.

2 DOCKET NO.: T-03842A-00-0130

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